

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BILLIE D. BERRY

Claimant

VS.

COW CAMP, INC.

Respondent

AND

KANSAS LIVESTOCK ASSOCIATION

Insurance Carrier

Docket No. **228,918**

ORDER

Respondent appealed Administrative Law Judge Bryce D. Benedict's Award dated November 21, 2000. The Board heard oral argument on March 21, 2001, by telephone conference.

APPEARANCES

Claimant appeared by his attorney, Geoffrey L. Schmidt for Timothy Power. Respondent and insurance carrier appeared by their attorney, D. Shane Bangerter.

RECORD & STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUE

The issue for Board review is whether the claimant is entitled to post award medical treatment. Respondent contends that the claimant's need for medical treatment is the result of his current employment and not a natural and probable consequence of the injury sustained while working for the respondent.

Conversely, the claimant contends his present complaints and need for treatment are the natural and probable consequence of his injury sustained working for the respondent and the Administrative Law Judge's award should be affirmed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

The claimant sustained a work-related injury each and every day worked commencing on September 9, 1997, when he slipped on wet milo while cleaning a roller mill. The claimant's primary complaint of pain was to the left side of his neck. The claimant was terminated by respondent on November 26, 1997. Following a course of conservative treatment, the claimant was released from treatment on January 7, 1998, with a lifting restriction of 35 pounds and a restriction against overhead work.

The parties settled the claim on February 25, 1999. The settlement was based upon a 12 percent permanent partial disability to the body as a whole with post award rights, including medical treatment, left open.

On September 15, 1998, the claimant obtained employment with KC Development as a truck driver hauling trash. The claimant daily drives a loaded truck from Marion, Kansas to Topeka, Kansas where the truck is unloaded and then he returns. The trip is approximately 247 miles round trip. The claimant does not load the truck and unloading does not require any manual labor other than opening the truck door.

In May 1999, the claimant began having ongoing neck complaints and the respondent authorized medical treatment with Dr. Kossow. Treatment with Dr. Kossow included a series of four epidural blocks with the last administered in August 1999. The epidural blocks provided temporary pain relief but the claimant noticed the pain gradually returned in December 1999.

The claimant testified his symptoms are worse some days but the only activity he performs is just getting in and out of the truck. The claimant denied any subsequent injuries, automobile accidents, slip and falls, or any other aggravations of his condition.

The claimant was referred by his attorney to Dr. Shechter for a physical examination on August 10, 2000. The doctor noted that claimant's symptoms are primarily due to osteophytic formation at the C5-6 and C6-7 cervical levels with nerve root pressure aggravated by the September 9, 1997 injury which caused inflammation of the involved nerve roots. The doctor stated that claimant was not a surgical candidate at the present time. The doctor recommended further treatment consisting of epidural blocks, anti-inflammatory medication, outpatient physical therapy and pain management. Lastly, the

doctor opined that claimant's complaints were a natural and probable consequence of the injury sustained September 9, 1997, while employed by the respondent. In reaching this conclusion, the doctor opined the claimant's current job driving the truck did not aggravate his condition.

The claimant was referred by the respondent to Dr. Pratt for an examination on September 8, 2000. Dr. Pratt apportioned the present need for medical care to claimant's pre-existing degenerative disease, the work-related injury in 1997, and his current work activities. Dr. Pratt opined that claimant's truck driving, including turning his head right and left and up and down while driving, could exacerbate his symptoms. The doctor noted that he would expect the claimant's condition to gradually worsen because of the natural progression of the degenerative condition and that treatment including additional epidural steroid injections would not be unusual.

Once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable under the Kansas Workers Compensation Act so long as the worsening is not shown to have been produced by an independent cause.¹

It is undisputed that claimant sustained a work-related injury to his cervical spine during the course of his employment with the respondent. The claimant testified that he had not sustained any additional aggravation or injury and that his condition had gradually worsened. Moreover, the claimant testified that some days the pain worsens irrespective of his activities or how many times he has to get in and out of his truck. The following colloquy is illustrative:

Q. What types of activities do you perform that you find that your symptoms are worse than at other times?

A. Well, just -- there's just days that it bothers me more. It's not that I actually do that much. Like I said, just in and out of the truck is basically all I do, but there are days that it bothers me more.

Q. Are there days that you have to perform more physical activities than other days?

A. No, not now.

Q. Are there days that you would get in and out of your truck more often than usual?

¹*Nance v. Harvey County*, 263 Kan. 543, 952 P.2d 411 (1997).

A. Well, there might be days of that, like if I had a flat tire or something I have to get in and out more, yeah.

Q. And do you find on those days that your pain complaints are worse?

A. No, not really.²

Although Dr. Pratt apportioned a part of the cause for additional medical treatment to claimant's current work activities, the doctor's conclusion that driving exacerbates the condition is refuted by the foregoing excerpt of claimant's testimony that his pain waxes and wanes irrespective of his activity level at his current employment.

Dr. Shechter opined that claimant's present need for medical treatment is a natural and probable consequence of the claimant's injury sustained while working for the respondent and not the result of any aggravation related to his current employment. Even Dr. Pratt apportioned part of the cause for additional medical treatment to a natural and probable progression of the degenerative condition as well as a natural and probable consequence of the work-related injury.

Upon review of the entire evidentiary record, the Board concludes the claimant has met his burden of proof to establish that his need for medical treatment is a natural and probable consequence of his injury sustained while working for the respondent. The Administrative Law Judge's award is and should be affirmed in all respects.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated November 21, 2000, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of May 2001.

BOARD MEMBER

²Preliminary Hearing, August 23, 2000; pp. 11-12.

BOARD MEMBER

BOARD MEMBER

pc: Geoffrey L. Schmidt, Claimant's Attorney, Overland Park, KS
D. Shane Bangerter, Respondent's Attorney, Dodge City, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director